

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JUDI L. NICON-ORCUTT,  
Plaintiff,

vs.

FOREMOST INSURANCE COMPANY  
GRAND RAPIDS, MICHIGAN a/k/a and  
d/b/a FOREMOST INSURANCE  
COMPANY and FOREMOST INSURANCE  
COMPANY,

Defendants.

No. 2:15-cv-00343-MJP

**DECLARATION OF THOMAS  
LEATHER IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

I, Thomas Lether, declare as follows:

1. I am over the age of 18 years, a citizen of the State of Washington and am competent to testify as to the statements made herein. I make the statements made herein based upon personal knowledge, except where stated as based upon information and belief. As to any statements made based upon information and belief, I believe those statements to be true based upon a reasonable belief as to the contents of those statements.

2. I am a Counsel for Foremost Insurance Company Grand Rapids, Michigan ("Foremost") in regard to the above-referenced matter. I have personal knowledge of all of the following factual information which has occurred in regard to those facts.

1           3.       On March 14, 2014, I conducted the Examination Under Oath of the Plaintiff,  
2 Judi Nikon-Orcutt. Attached hereto as **Exhibit A** is a true and correct copy of the Examination  
3 Under Oath transcript.

4           4.       Following the parties' execution of a mediation agreement in regard to this  
5 matter, I had a number of conversations with Plaintiff's counsel Jeffrey Thigpen. The purpose  
6 of these conversations was to discuss a potential resolution of the claim given the coverage  
7 concerns and outstanding issues presented in this matter. Those issues included not only the  
8 cause of the loss but the issues involving whether or not there was coverage for a separate  
9 structure, time limits available for the insured to replace the property, and other issues. As part  
10 of these conversations Foremost repeatedly attempted to settle the case on a global basis. Mr.  
11 Thigpen on behalf of his client repeatedly advised me in these calls that his client was not in a  
12 position to resolve the claim with Foremost until she resolved the claim with her mortgage  
13 holder. Specifically, Mr. Thigpen advised me in multiple conversations that he was attempting to  
14 negotiate a reduction of Ms. Orcutt's mortgage based on hardship grounds. It was explained to  
15 Mr. Thigpen that in order for Farmers to pay the structure claim Farmers would need to name  
16 the mortgage holder. Mr. Thigpen repeatedly requested Foremost to not issue any payments due  
17 to the fact that Ms. Orcutt wanted to have the mortgage balance reduced prior to any payments  
18 being made. Mr. Thigpen repeatedly voiced his frustrations with dealing with the mortgage  
19 holder and their lack of responsiveness to his client's request for a reduction. In my discussions  
20 with him, we repeatedly advised Mr. Thigpen that Foremost's intent was to proceed to make a  
21 payment and was concerned by the delays that were resulting from his client's efforts with her  
22 own mortgage holder. Mr. Thigpen expressed his client's appreciation to Foremost's patience  
23 and giving her time to work with her mortgage holder. On January 8, 2015 Mr. Thigpen

1 telephoned me to tell me that he had finally heard back from the mortgage holder, who indicated  
2 that they would not provide a hardship exception. He advised me that accordingly he would be  
3 sending me a letter requesting payment of the claim. That letter was received on January 9,  
4 2015. On the same day, Foremost extended coverage.

5 5. On July 10, 2015, Lether & Associates issued Requests for Production to the  
6 Plaintiff. On August 27, 2015, Plaintiff responded by producing a number of documents.  
7 Attached hereto as **Exhibit B** are relevant documents produced by the Plaintiff in this matter.

8 6. On September 1, 2015, the parties conducted the deposition of the Plaintiff, Judi  
9 Nikon-Orcutt. Attached hereto as **Exhibit C** is a true and correct copy of the Plaintiff's  
10 deposition transcript.

11 I declare under penalty of perjury under the laws of the State of Washington, that the  
12 foregoing is true and correct.

13  
14 DATED this 10<sup>th</sup> day of December, 2015.

15 LETHER & ASSOCIATES, PLLC

16 s/ Thomas Lether

17 Thomas Lether, WSBA #18089

18 1848 Westlake Ave N, Suite 100

19 Seattle, WA 98102

20 tlether@letherlaw.com

21 *Attorneys for Defendant*

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under the penalty of perjury under the laws of the  
3 State of Washington that on this date I caused to be served in the manner noted below a true  
4 and correct copy of the foregoing on the party mentioned below as indicated:

5 Jeffrey Thigpen  
6 1811 C Street  
7 Bellingham, WA 98225

8 **Via: [X] ECF [ ] E-mail [ ] Via U.S Mail**

9 Dated this 10<sup>th</sup> day of December, 2015, at Seattle, Washington.

10 s/ Nicholas McMurray  
11 Nicholas McMurray, Paralegal  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23